



RESOLUTION

PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO CERTAIN VISITOR ACCOMMODATIONS.

WHEREAS, under the current Land Use Ordinance ("LUO"), transient vacation units ("TVUs") are permitted as of right in the Resort District and the Resort Mixed Use Precinct of the Waikiki Special District. TVUs are also permitted in the A-2 Medium Density District if they are within 3,500 feet of a Resort District of greater than 50 contiguous acres and the Resort District and the A-2 District were rezoned pursuant to the same zone change application as part of a master-planned resort community. TVUs are not allowed in any other zoning district; and

WHEREAS, Ordinance 89-154 established provisions that allowed TVUs located in zoning districts where they were no longer allowed to continue in operation if they were in existence prior to certain preceding dates and obtained a nonconforming use certificate ("NUC"); and

WHEREAS, Ordinance 89-154 prohibited new bed and breakfast homes ("B&Bs") in all zoning districts, but allowed existing B&Bs to continue in operation if they were in existence prior to certain preceding dates and obtained an NUC; and

WHEREAS, certain residential areas on Oahu have had long-term problems with illegal TVU or B&B operations, resulting in complaints to the City about noise, illegal parking, and other problems associated with such operations; and

WHEREAS, the Council believes that establishing a permitting process and standards for TVU and B&B operations will minimize the impact of these uses in residential areas and result in a reduction of the problems associated with illegal TVU and B&B operations; and

WHEREAS, the Council attempted to address these problems in 2008 and 2015, when it considered bills relating to TVUs or B&Bs, but was unable reach consensus on a solution at that time; and

WHEREAS, the Council believes that because of the continuing problems with illegal TVU and B&B operations in residential neighborhoods, it is time to restart the discussion and once again attempt to address the problems; and



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WHEREAS, the Council therefore desires to propose amendments to the LUO to allow a limited number of new TVUs or B&Bs in certain geographic residential areas where they are currently prohibited, subject to certain permitting processes and operating standards; and

WHEREAS, Section 6-1513 of the Revised Charter of the City and County of Honolulu 1973 (2000 Edition), as amended ("Charter"), provides that "[a]ny revision of or amendment to the zoning ordinances may be proposed by the council and shall be processed in the same manner as if proposed by the director [of planning and permitting]"; and

WHEREAS, the term "zoning ordinances," as used in Charter Section 6-1513 includes both amendments to the LUO and to ordinances designating particular parcels of property in terms of the LUO; and

WHEREAS, Chapter 2, Article 24, Revised Ordinances of Honolulu 1990 ("ROH"), establishes procedures and deadlines for the processing of Council proposals to revise or amend the general plan, the development plans, the zoning ordinances, and the subdivision ordinance, and clarifies the responsibility of the Director of Planning and Permitting to assist the Council in adequately preparing its proposals for processing; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the Director of Planning and Permitting and the Planning Commission are directed, pursuant to Charter Section 6-1513, and ROH Chapter 2, Article 24, to process the proposed amendment to ROH Chapter 21 (the "Land Use Ordinance"), attached hereto as Exhibit A, in the same manner as if the proposal had been proposed by the Director; and

BE IT FURTHER RESOLVED that the Director of Planning and Permitting is directed to inform the Council upon the transmittal of the Director's report and the proposed Land Use Ordinance amendment to the Planning Commission; and



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

No. 17-163

RESOLUTION

BE IT FINALLY RESOLVED that, pursuant to ROH Chapter 2, Article 24, the Clerk shall transmit copies of this resolution and the Exhibit attached hereto to the Director of Planning and Permitting and the Planning Commission of the City and County of Honolulu, and shall advise them in writing of the date by which the Director's report and accompanying proposed ordinance are required to be submitted to the Planning Commission.

INTRODUCED BY:

[Handwritten Signature]

DATE OF INTRODUCTION:

MAY 25 2017

Honolulu, Hawaii

Councilmembers

SOJ/IVL/S2 LH 5:21

05/25/2017 10:00 AM

EXHIBIT A



A BILL FOR AN ORDINANCE

RELATING TO CERTAIN VISITOR ACCOMMODATIONS.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Purpose. The purpose of this ordinance is to amend the Land Use Ordinance's regulation of transient vacation units and bed and breakfast homes. In particular, it allows transient vacation units and bed and breakfast homes currently operating under a nonconforming use certificate to continue to operate under such a certificate, and establishes these uses as conditional uses in certain zoning districts subject to standards and restrictions. The standards and restrictions and the conditional use permitting process are intended to minimize the impact of transient vacation units and bed and breakfast homes in those zoning districts. This ordinance also adds requirements for the advertising of all transient vacation units and bed and breakfast homes.

SECTION 2. Section 21-2.40-1, Revised Ordinances of Honolulu 1990 ("Minor permits"), is amended by adding a new subsection (d) to read as follows:

"(d) Application and Processing for a Minor Permit for a Transient Vacation Unit or Bed and Breakfast Home.

(1) Eligibility.

(A) Only the fee simple owner of record, or the lessee of record with more than 15 years remaining in the term of the lease at the time of permit application, of the real property proposed for a transient vacation unit is eligible for a conditional use permit (minor) for the transient vacation unit.

(B) Only persons having a real property tax home exemption under Section 8-10.4 for the tax map key parcel proposed for a bed and breakfast home are eligible for a conditional use permit (minor) for the bed and breakfast home.

(2) All permit applications must include:

(A) For transient vacation units, the name, address, and telephone number of the applicant and verification that the applicant is the owner or lessee of the real property. If the applicant is a lessee, the applicant must submit evidence that there are at least 15 years remaining in the term of the lease. If a proposed transient vacation



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- unit will be managed by an operator, the name, address, and telephone number of the operator also must be provided;
- (B) For bed and breakfast homes, the name, address, and telephone number of the applicant, verification that the applicant is the owner of the zoning lot, and verification that the owner's primary residence is on the same tax map key parcel as the bed and breakfast home;
- (C) The tax map key number of the real property where the use will be conducted; and
- (D) A floor plan of the transient vacation unit or bed and breakfast home.
- (3) An applicant seeking a permit for a transient vacation unit or bed and breakfast home shall submit an application to the director for processing. The director shall number stamp the application and process it in the order in which it is received.
- (4) Notwithstanding Section 6-41.1(a)(8), the fee for a conditional use permit (minor) for a transient vacation unit or bed and breakfast home is \$2,000. All fees for transient vacation unit or bed and breakfast home permits, including all renewals thereof, are to be used for the department's regulation of transient vacation units and bed and breakfast homes.
- (5) Within 45 days of the director's acceptance of the completed application, the director shall:
- (A) Approve the application as submitted;
- (B) Approve the application with modifications and/or conditions; or
- (C) Deny the application and provide the applicant with a written explanation for the denial and required actions by the applicant necessary to obtain approval of the application. If the applicant makes the appropriate corrections and resubmits the application, the director shall act on the resubmitted application within 45 days as provided in this subdivision.



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Provided, however, that if an applicant substantially amends an application after acceptance by the director, the director will have up to 45 days from the date of such amendment to act on the application as provided in this section."

SECTION 3. Section 21-2.150-2, Revised Ordinances of Honolulu 1990 ("Administrative enforcement"), is amended by adding a new subsection (e) to read as follows:

"(e) Where the director, pursuant to subsection (d), has instituted a civil action in any court of competent jurisdiction to enforce the civil fine imposed by any order issued pursuant to this section, all costs of enforcement, including legal costs and attorneys' fees, may be reduced to a judgment or recorded as a lien against the property on which such enforcement occurs. A lien recorded against the property that is registered in the bureau of conveyances or land court is enforceable in the same manner as any mortgage or other lien on real property. The interest secured by the city lien is senior to any lien recorded or registered after the city lien is recorded and subordinate to any lien recorded prior to the city lien."

SECTION 4. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, is amended by adding a new Section 21-2.150-3 to read as follows:

"Sec. 21-2.150-3 Information required in advertisement for transient vacation unit or bed and breakfast home—Notice and penalty.

- (a) If any advertisement does not have the information required by Section 21-5.640A(n), the owner or the rental agent of the transient vacation unit or bed and breakfast home being advertised shall, within seven business days of receiving a notice of violation, terminate the dissemination of any advertisements that do not contain the required information, and shall, within seven business days of receiving a notice of violation, take action to cure the violation. Failure to do so will subject the owner or rental agent to the civil fines provided in subsection (b).
- (b) Any owner or rental agent of a transient vacation unit or bed and breakfast home violating this section is subject to the following civil fines:
- (1) For a first violation, an initial fine of \$5,000, and daily fines of \$5,000 per day until the violation is corrected;



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(2) For a second violation occurring within a twelve-month period, a fine of \$7,500, and daily fines of \$7,500 per day until the violation is corrected. Recurring violations occur when the previous violation has been corrected and a subsequent infraction of the same section occurs; and

(3) For a third violation occurring within a twelve-month period, an initial fine of \$10,000, and daily fines of \$10,000 per day until the violation is corrected.

Nothing in this subsection precludes the department from seeking any other remedy against a violator of this section.

(c) Except as otherwise provided in this section, the provisions of Section 21-2.150-2 apply to the administrative enforcement for violations of Section 21-5.640A(n)."

SECTION 5. Chapter 21, Article 2, Revised Ordinances of Honolulu 1990, is amended by adding a new Section 21-2.150-4 to read as follows:

"Sec. 21-2.150-4 Depository of fees and civil penalties relating to transient vacation units or bed and breakfast homes.

Notwithstanding any other ordinance to the contrary, payments of fees and civil penalties relating to transient vacation units or bed and breakfast homes are to be deposited into a special account of the general fund, to be appropriately named by the department of budget and fiscal services, and used for expenses related to the regulation of such uses by the department."



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SECTION 6. Table 21-3, Revised Ordinances of Honolulu 1990 ("Master Use Table"), is amended by amending the "Dwellings and Lodgings" category to add a "Bed and breakfast homes" use entry, and by amending the "Transient vacation units" use entry, to read as follows:

**"TABLE 21-3
MASTER USE TABLE**

In the event of any conflict between the text of this Chapter and the following table, the text of the Chapter shall control. The following table is not intended to cover the Waikiki Special District; please refer to Table 21-9.6(A).

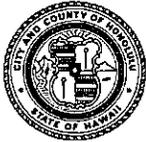
KEY: Ac = Special accessory use subject to standards in Article 5
 Cm = Conditional Use Permit-minor subject to standards in Article 5; no public hearing required (see Article 2 for exceptions)
 C = Conditional Use Permit-major subject to standards in Article 5; public hearing required
 P = Permitted use
 P/c = Permitted use subject to standards in Article 5
 PRU = Plan Review Use

USES (Note: Certain uses are defined in Article 10.)	ZONING DISTRICTS																					
	P-2	AG-1	AG-2	Country	R-20, R-10	R-7.5, R-5, R-3.5	A-1	A-2	A-3	AMX-1	AMX-2	AMX-3	Resort	B-1	B-2	BMX-3	BMX-4	I-1	I-2	I-3	IMX-1	
DWELLINGS AND LODGINGS																						
Bed and breakfast homes				Cm	Cm	Cm	Cm	Cm	Cm													
Transient vacation units					Cm	Cm	Cm	Cm	Cm													

SECTION 7. Section 21-4.110-1, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-4.110-1 Nonconforming use certificates for transient vacation units.

- (a) The purpose of this section is to ~~trear~~ permit certain transient vacation units ~~which~~ that have been in operation since prior to October 22, 1986 as nonconforming uses and to allow them to continue subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a transient vacation unit who holds a valid and current nonconforming use certificate pursuant to this section on the effective date of this ordinance.



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- (b) ~~[The owner, operator, or proprietor of any transient vacation unit which is operating in an area where such use is not expressly permitted by this chapter shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the years 1986 to 1989. Upon a determination that the use was in existence prior to October 22, 1986 and has continued through December 28, 1989, the director shall issue a nonconforming use certificate for the transient vacation unit.~~
- (c) ~~Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use, as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use but shall be treated as an illegal use.~~
- (d) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate [in accordance with the following schedule:
- (1) ~~between September 1, 2000 and October 15, 2000; then~~
 - (2) ~~between September 1 and October 15 of every even numbered year thereafter.] no later than September 30 of each year. Each application to renew [shall] must include proof that: [(i) there]~~
- (1) There were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use during each calendar year covered by the nonconforming use certificate being renewed and that there were transient occupancies (occupancies of less than 30 days apiece) for a total of at least 35 days during each such year; and [that (ii) there]
 - (2) There has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a transient occupancy.



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If the applicant does not reside on Oahu, the application must include the name, address, and phone number of an on-island licensed agent for receipt of any notices or complaints. Applicants shall keep their licensed agent information current with the department. Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate[.], except where the applicant establishes good cause for failing to meet conditions of renewal. In such situations, an additional fee of \$1,000 will be assessed against the applicant upon approval of each application. In no case will an application for renewal received 45 days or more after the expiration of the renewal period be approved. The requirement for the 35 days of transient occupancies [shall] will be effective on January 1, 1995 and [shall apply] applies to renewal applications submitted on or after January 1, 1996.

- [(e)](c) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises. In the event that a single address is associated with numerous nonconforming use certificates, a listing of all units at that address holding current certificates may be displayed in a conspicuous common area instead.
- (d) The owner, operator, or proprietor of any transient vacation unit who has obtained a nonconforming use certificate under this section, and any rental agent thereof, shall comply with the provisions of Sections 21-5.640A(n) and 21-2.150-3, relating to information required in advertisements for transient vacation units; provided that, instead of the permit number, the advertisement must include the nonconforming use certificate number.
- (e) The nonconforming use certificate will not run with the land and will terminate upon the transfer of any interest in the real property. A new owner may apply for a conditional use permit (minor) for a transient vacation unit pursuant to the requirements of this chapter. For purposes of this subsection, "transfer" does not include:
- (1) The creation, modification, or release of a lien or encumbrance;
 - (2) The transfer, during the owner's lifetime and for estate planning purposes, of the owner's entire interest in the real property to a trust in which the owner is the sole trustee and beneficiary;
 - (3) A gratuitous transfer made to an owner's spouse, domestic partner or issue, including adopted children, or to a trust for the exclusive benefit of the owner's spouse, domestic partner or issue;



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- (4) A transfer of title to the owner's spouse, domestic partner or issue, including adopted children, effected pursuant to the owner's will, trust or the laws of intestate succession; or
- (5) For property held in joint tenancy or tenancy by the entirety, the acquisition by a surviving cotenant or cotenants of an interest in real property as a result of the right of survivorship and the death of a cotenant."

SECTION 8. Section 21-4.110-2, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-4.110-2 ~~[Bed and breakfast homes—]~~ Nonconforming use certificates for bed and breakfast homes.

- (a) The purpose of this section is to ~~[prohibit bed and breakfast homes, while permitting]~~ permit certain bed and breakfast homes ~~[which]~~ that have been in operation since prior to December 28, 1989 to continue to operate as nonconforming uses subject to obtaining a nonconforming use certificate as provided by this section. This section applies to any owner, operator, or proprietor of a bed and breakfast home who holds a valid and current nonconforming use certificate pursuant to this section on the effective date of this ordinance.
- (b) ~~[The owner, operator, or proprietor of any bed and breakfast home shall, within nine months of December 28, 1989, establish to the satisfaction of the director that the use was in existence as of December 28, 1989, or shall cease its operation. The owner, operator, or proprietor shall have the burden of proof in establishing that the use is nonconforming. Documentation substantiating existence of a bed and breakfast home as of December 28, 1989 may include records of occupancy or tax documents, such as State of Hawaii general excise tax records, transient accommodations tax records, and federal and/or State of Hawaii income tax returns, for the year preceding December 28, 1989. Upon a determination that the use was in existence as of December 28, 1989, the director shall issue a nonconforming use certificate for the bed and breakfast home.~~
- (c) ~~Failure to obtain a nonconforming use certificate within nine months of December 28, 1989 shall mean that the alleged nonconforming use as of December 28, 1989, is not a bona fide nonconforming use, and shall not continue as a nonconforming use, but shall be treated as an illegal use.~~



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~~(d)~~ The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall apply to renew the nonconforming use certificate ~~[in accordance with the following schedule:~~

~~(1) between September 1, 2000 and October 15, 2000; then~~

~~(2) between September 1 and October 15 of every even-numbered year thereafter.] no later than September 30 of each year.~~ Each application to renew ~~[shall] must~~ include proof that: ~~[(i) there]~~

(1) There were in effect a State of Hawaii general excise tax license and transient accommodations tax license for the nonconforming use for each calendar year covered by the nonconforming use certificate being renewed and that there were bed and breakfast occupancies (occupancies of less than 30 days apiece) for a total of at least 28 days during each such year; and ~~[that (ii) there]~~

(2) There has been no period of 12 consecutive months during the period covered by the nonconforming use certificate being renewed without a bed and breakfast occupancy.

Failure to meet these conditions will result in the denial of the application for renewal of the nonconforming use certificate~~[-],~~ except where the applicant establishes good cause for failing to meet conditions of renewal. In such situations, an additional fee of \$1,000 will be assessed against the applicant upon approval of each application. In no case will an application for renewal received 45 days or more after the expiration of the renewal period be approved. The requirement for the 28 days of bed and breakfast occupancies ~~[shall] will~~ be effective on January 1, 1995 and ~~[shall apply]~~ applies to renewal applications submitted on or after January 1, 1996.

~~[(e) Except those bed and breakfast homes that are nonconforming uses, and, after nine months from December 28, 1989, for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section, bed and breakfast homes are prohibited in all zoning districts. Section 21-5.350 relating to home occupations shall not apply to bed and breakfast homes.~~

~~(f) Those bed and breakfast homes for which a nonconforming use certificate has been issued and renewed, as required, pursuant to this section shall operate pursuant to the following restrictions and standards:~~



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- ~~(1) — Detached dwellings used as bed and breakfast homes must be occupied by a family and shall not be used as a group living facility. Rooming shall not be permitted in bed and breakfast homes.~~
- ~~(2) — No more than two guest rooms may be rented to guests, and a maximum number of guests permitted within the bed and breakfast home at any one time shall be four.~~
- ~~(3) — There shall be no exterior signage that advertises or announces that the dwelling is used as a bed and breakfast home.~~
- ~~(4) — One off-street parking space shall be provided for each guest room, in addition to the required spaces for the dwelling unit.~~
- ~~(f)](c) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section shall display the certificate issued for the current year in a conspicuous place on the premises.~~
- (d) The owner, operator, or proprietor of any bed and breakfast home who has obtained a nonconforming use certificate under this section, and any rental agent thereof, shall comply with the provisions of Sections 21-5.640A(n) and 21-2.150-3, relating to information required in advertisements for bed and breakfast homes; provided that, instead of the permit number, the advertisement must include the nonconforming use certificate number.
- (e) The nonconforming use certificate will not run with the land and will terminate upon the transfer of any interest in the real property. A new owner may apply for a conditional use permit (minor) for a bed and breakfast home pursuant to the requirements of this chapter. For purposes of this subsection, "transfer" does not include:
 - (1) The creation, modification, or release of a lien or encumbrance;
 - (2) The transfer, during the owner's lifetime and for estate planning purposes, of the owner's entire interest in the real property to a trust in which the owner is the sole trustee and beneficiary;
 - (3) A gratuitous transfer made to an owner's spouse, domestic partner or issue, including adopted children, or to a trust for the exclusive benefit of the owner's spouse, domestic partner or issue;



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- (4) A transfer of title to the owner's spouse, domestic partner or issue, including adopted children, effected pursuant to the owner's will, trust or the laws of intestate succession; or
- (5) For property held in joint tenancy or tenancy by the entirety, the acquisition by a surviving cotenant or cotenants of an interest in real property as a result of the right of survivorship and the death of a cotenant."

SECTION 9. Section 21-5.350, Revised Ordinances of Honolulu 1990 ("Home occupations"), is amended by amending subsection (i) to read as follows:

"(i) The following activities are not permitted as home occupations:

- (1) Automobile repair and painting. However, any repair and painting of vehicles owned by household members shall be permitted, provided that the number of vehicles repaired or painted shall not exceed five per year per dwelling unit. A household member providing any legal document showing ownership of an affected vehicle shall be deemed to satisfy this requirement.
- (2) Contractor's storage yards.
- (3) Care, treatment or boarding of animals in exchange for money, goods or services. The occasional boarding and the occasional grooming of animals not exceeding five animals per day shall be permitted as home occupations.
- (4) Those on-premises activities and uses which are only permitted in the industrial districts.
- (5) Use of dwellings or lots as a headquarters for the assembly of employees for instructions or other purposes, or to be dispatched for work to other locations.
- (6) Sale of guns and ammunition.
- (7) Mail and package handling and delivery businesses.
- (8) Use of the dwelling as a transient vacation unit or bed and breakfast home."



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SECTION 10. Section 21-5.640, Revised Ordinances of Honolulu 1990, is amended to read as follows:

"Sec. 21-5.640 Time sharing and transient vacation units.

(a) Time sharing and transient vacation units ~~[shall be]~~ are permitted in the A-2 medium density apartment zoning district provided:

~~[(a)]~~(1) They are within 3,500 feet of a resort zoning district of greater than 50 contiguous acres; and

~~[(b)]~~(2) The resort district and the A-2 district ~~[shall]~~ have been rezoned pursuant to the same zone change application as part of a master-planned resort community.

(b) This subsection applies to any transient vacation unit subject to subsection (a), or located in the resort district or the resort mixed use precinct of the Waikiki special district. The owner, operator, or proprietor of the transient vacation unit, and any rental agent thereof, shall comply with the provisions of Sections 21-5.640A(n) and 21-2.150-3, relating to information required in advertisements for transient vacation units; provided that the advertisement must only include the street address, including, if applicable, any apartment unit number, for the transient vacation unit."

SECTION 11. Chapter 21, Article 5, Revised Ordinances of Honolulu 1990 ("Specific Use Development Standards"), is amended by adding a new Section 21-5.640A to read as follows:

"Sec. 21-5.640A Transient vacation units and bed and breakfast homes.

(a) This section applies to:

(1) Transient vacation units in the residential and apartment districts; provided that it does not apply to transient vacation units in the A-2 medium density apartment district that are subject to Section 21-5.640; and

(2) All bed and breakfast homes.

(b) As used in this section:

"Permit" means the conditional use permit (minor) for a transient vacation unit or bed and breakfast home; and



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"Owner" means: (1) the fee simple owner of record, or the lessee of record with more than 15 years remaining in the term of the lease at the time of application for the permit, of the real property used as a transient vacation unit; or (2) the person having a real property tax home exemption under Section 8-10.4 for the tax map key parcel on which a bed and breakfast home is located.

- (c) The number of permits issued and outstanding pursuant to this section is limited as follows:
- (1) City-wide limit. The total number of permits in the city cannot exceed _____ percent of the total number of properties classified as residential or residential A by the director of budget and fiscal services pursuant to Section 8-2.2 for the 2017-2018 fiscal year. This 2017-2018 number will be the permanent city-wide limit for purposes of this subsection.
 - (2) Limit in each development plan area. The number of permits issued for properties located in each development plan area cannot exceed _____ percent of the city-wide limit established in subdivision (1). Of the number of permits available in each development plan area:
 - (A) _____ percent will be for transient vacation units; and
 - (B) _____ percent will be for bed and breakfast homes.
 - (3) Of the number of permits available in each development plan area, preference will first be given to persons who hold a current nonconforming use certificate for a transient vacation unit or bed and breakfast home, provided that application therefore is made during the term of the nonconforming use certificate or within 60 days after the expiration and nonrenewal thereof. Thereafter, permits will be issued in the order in which the application is received. Applications received after the applicable permit limits have been reached will be placed on a waiting list and be eligible for processing in the order received.
- (d) Permit holder; restrictions.
- (1) The permit for a transient vacation unit must be in the name of the owner. If the applicant is a lessee, the applicant shall provide written authorization from the lessor allowing the unit to be used as a transient vacation unit.



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- (2) The permit for a bed and breakfast home must be in the name of the owner. The owner, or in the event of real property held jointly, by the entirety, or in common, at least one individual owner shall reside on the property on which a bed and breakfast home is located. No more than three bedrooms in a bed and breakfast home may be rented to guests, and the maximum number of guests per bedroom is two.
- (e) The owner shall hold a current transient accommodations tax (TAT) license and a general excise tax (GET) license for the transient vacation unit or bed and breakfast home in the owner's name.
- (f) An owner may not hold more than one permit at one time.
- (g) Section 21-2.90-2(c) and Section 21-7.40(c) and (d) notwithstanding, there can be no exterior signage that advertises or announces that the dwelling is used as a transient vacation unit or bed and breakfast home.
- (h) Section 21-2.90-2(c) notwithstanding, off-street parking spaces must be provided for all guest vehicles at the transient vacation unit or bed and breakfast home. Tandem parking is acceptable and the parking area may be composed of natural materials in order to preserve the natural appearance.
- (i) The permit will not run with the land and will terminate upon the transfer of any interest in the real property. A new owner may apply for a permit for a transient vacation unit or bed and breakfast home pursuant to the requirements of this chapter. For purposes of this subsection and subsection (j), "transfer" does not include:
- (1) The creation, modification, or release of a lien or encumbrance;
 - (2) The transfer, during the owner's lifetime and for estate planning purposes, of the owner's entire interest in the real property to a trust in which the owner is the sole trustee and beneficiary;
 - (3) A gratuitous transfer made to an owner's spouse, domestic partner or issue, including adopted children, or to a trust for the exclusive benefit of the owner's spouse, domestic partner or issue;
 - (4) A transfer of title to the owner's spouse, domestic partner or issue, including adopted children, effected pursuant to the owner's will, trust or the laws of intestate succession; or



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- (5) For property held in joint tenancy or tenancy by the entirety, the acquisition by a surviving cotenant or cotenants of an interest in real property as a result of the right of survivorship and the death of a cotenant.
- (j) The owner shall, within 14 business days, notify the director in writing of the transfer of any interest in the transient vacation unit or bed and breakfast home, or if the owner will no longer be residing on the property on which a bed and breakfast home is located.
- (k) The transient vacation unit or bed and breakfast home must be operated in accordance with the following standards:
- (1) Within ten days of the issuance of the permit, the owner shall provide his or her name and contact telephone number to the residents on all adjoining properties. The owner shall provide proof of such notification to the director within 30 days after issuance of the permit.
- (2) The owner shall maintain a register setting forth the names of all guests, the dates of their respective stays, and the year, make, model, and license plate number of the vehicles used by the guests. The register must be preserved for the term of the permit and until such time as the permit is renewed or is terminated. The owner shall provide the director, the director's authorized agent, or the police department with access to the register upon request.
- (3) The owner shall post the current permit in the interior entryway of the transient vacation unit or bed and breakfast home.
- (4) The owner shall establish and enforce written house rules, include the rules in the guest rental agreement, and post the rules in a prominent location in the transient vacation unit or bed and breakfast home. The rules must, at a minimum:
- (A) Require that all guest vehicles be parked on the premises; and
- (B) Prohibit any activity or noise that disrupts the peace and quiet of the neighborhood, particularly between the hours of 10:00 p.m. and 7:00 a.m.

A copy of the house rules must be submitted with the application for the permit or any renewal thereof.



A BILL FOR AN ORDINANCE

- (5) The owner shall comply with all applicable provisions of the Fire Code.
- (l) The owner shall respond to any complaint received from neighboring residents regarding the operation of the transient vacation unit or bed and breakfast home within two hours after receipt of the complaint. The owner shall maintain a log of every complaint received from neighboring residents, including the name and address of the neighbor, the date and time of the complaint, a detailed description of the complaint, and a detailed description of the response to the complaint. The owner shall keep the neighbor informed as to how the complaint was handled. The owner shall provide access to the complaint log to the director or the director's authorized agent upon request. This subsection does not apply to anonymous complaints.
- (m) The owner shall grant access to the transient vacation unit or bed and breakfast home to the director or the director's authorized agent, upon 24 hours' prior written notice delivered to the owner, for purposes of allowing inspection of the premises to ensure compliance with this section or any permit condition.
- (n) Advertisements.
- (1) Information required: The owner and any rental agent thereof, shall include, in all advertisements for occupancy of the unit, the permit number and street address, including, if applicable, any apartment unit number, for the transient vacation unit or bed and breakfast home. For the purpose of this subsection and Section 21-2.150-3:
- (A) "Advertisement" includes any written, graphic, or pictorial statement or broadcast disseminated by or at the direction of the owner of a transient vacation unit or bed and breakfast home in any manner or by any means, including, but not limited to, newspapers, magazines, television, radio, brochures, and through the internet; and
- (B) "Rental agent" means any person who lists, solicits for prospective lessees or renters for, leases or offers to lease, or rents or offers to rent, a transient vacation unit or bed and breakfast home owned by another person.
- (2) Prima facie evidence. The existence of an advertisement for a transient vacation unit or bed and breakfast home will be prima facie evidence of the following:



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- (A) That the owner of the advertised unit disseminated or directed the dissemination of the advertisement in that form and manner, regardless of whether the advertisement bears the name, business address, or service mark of the rental agent; and
- (B) That a transient vacation unit or bed and breakfast home, as applicable, is being operated at the listed address.

The burden of proof shall be on the owner to establish otherwise with respect to the advertisement and that the subject property either is not being used as a transient vacation unit or bed and breakfast home, or that it is being used legally for such purpose.

(o) Permit expiration and renewal.

- (1) The permit expires two years after issuance, unless revoked prior to expiration. If a permit is suspended, time will continue to run for measuring the period of that permit's validity.
- (2) Not more than 90, but not less than 45 days before the expiration of a permit, the owner may apply for a renewal of the permit on an appropriate application form provided by the director. The renewal will be subject to the same requirements as an application for a new permit, except that they will not be subject to the city-wide and development plan area numerical restrictions. The renewal application must be accompanied by satisfactory evidence, such as a tax clearance certificate signed by the State of Hawaii director of taxation, showing that the owner does not owe the State of Hawaii any delinquent general excise taxes, transient accommodations taxes, penalties, or interest, in connection with operation of the transient vacation unit or bed and breakfast home.
- (3) A grace period of not less than 30 days will be granted for an owner who does not renew the owner's permit by its expiration date, during which period the transient vacation unit or bed and breakfast home permit will continue in full force and effect. When renewing after a permit's expiration, the owner shall pay a late fee of \$1,000 in addition to the standard renewal fees.
- (4) The renewal application must be accompanied by a renewal fee that is the same as the fee for a new permit application.



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(5) The following may be grounds for nonrenewal of the permit:

(A) Violation of any provision of this section;

(B) Violation of any permit condition; or

(C) Violation of any other city ordinance, or state or federal law;

during the term of the previous permit, regardless of whether the violation has been corrected at the time of the application.

(p) Revocation or suspension of permit.

The director may revoke or suspend a permit for good cause, including but not limited to:

(1) Violation of any provision of this section;

(2) Violation of any permit condition;

(3) Violation of any other city ordinance, or state or federal law; or

(4) Misrepresentations, or willful, substantial omissions of material facts in the permit application.

The director shall provide the owner written notice of a revocation or suspension decision, stating the grounds for the suspension or revocation. The suspension or revocation takes effect ten days following the receipt of notice of the revocation or suspension, unless a timely appeal has been filed."



A BILL FOR AN ORDINANCE

SECTION 12. Table 21-9.6(A), Revised Ordinances of Honolulu 1990 ("Waikiki Special District Precinct Permitted Uses and Structures"), is amended by amending the "transient vacation units" use or structure entry and the explanatory notes following the table to read as follows:

"Table 21-9.6(A) Waikiki Special District Precinct Permitted Uses and Structures"			
Use or Structure	Precinct		
	Apartment	Resort Mixed Use	Public
Transient vacation units		[P] <u>P/c</u>	

Ministerial uses:

- Ac = Special accessory use. Also see: Article 10, Accessory use; and Section 21-5.330, Home occupations
- P = Permitted principal use
- P/c = Permitted use subject to standards in Article 5
- P9 = Permitted principal use subject to standards enumerated in Article 9; see Section 21-9.80-5(d), 21-9.80-6(d), or 21-9.80-8(d)
- P-AMX = Within the apartment precinct, a permitted principal use only within the apartment mixed use subprecinct

Discretionary uses:

- Cm = Requires an approved Conditional Use Permit - minor subject to standards in Article 5; no public hearing required
- C = Requires an approved Conditional Use Permit - major subject to standards in Article 5; public hearing required

Other:

- N/A = Not applicable as a land use category in that precinct, since it is already regulated under another land use category.

Note: An empty cell in the above matrix indicates that use or structure is not permitted in that precinct.

¹ Provided a solid wall 6 feet in height [shall] must be erected and maintained on any side or rear boundary adjoining the apartment precinct.

² Provided that where these uses are integrated with other uses, pedestrian access [shall] must be independent from the other uses, and [no] the building floor [shall] cannot be used for both dwelling and commercial purposes."



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

SECTION 13. Section 21-10.1, Revised Ordinances of Honolulu 1990 ("Definitions"), is amended by amending the definition of "bed and breakfast home" to read as follows:

""Bed and breakfast home" means a use in which overnight accommodations are provided to guests for compensation, for periods of less than 30 days, ~~[in the same detached dwelling as that occupied by an owner, lessee, operator or proprietor of the detached dwelling.]~~ on the same tax map key parcel as that for which a real property tax home exemption for the bed and breakfast owner has been granted under Section 8-10.4. For purposes of this definition, compensation includes, but is not limited to, monetary payment, services or labor of employees."

SECTION 14. Ordinance material to be repealed is bracketed and stricken. New material is underscored. When revising, compiling, or printing this ordinance for inclusion in the Revised Ordinances of Honolulu, the Revisor of Ordinances need not include the brackets, the material that has been bracketed and stricken, or the underscoring. The Revisor of Ordinances shall, pursuant to the Revisor's authority under ROH Section 1-16.3(b)(1), replace the phrase "effective date of this ordinance" or similar phrase used in the codified language of this ordinance with the actual date on which the ordinance takes effect.

SECTION 15. An owner, operator, or proprietor of a transient vacation unit or bed and breakfast home who holds a valid and current nonconforming use certificate issued pursuant to the Revised Ordinances of Honolulu ("ROH"), Sections 21-4.110-1 or 21-4.110-2 on the effective date of this ordinance will be allowed to continue to operate the transient vacation unit or bed and breakfast home pursuant to ROH Sections 21-4.110-1 or 21-4.110-2, as amended. The owner, operator, or proprietor of the transient vacation unit or bed and breakfast home shall cease its operation upon the expiration and nonrenewal of the nonconforming use certificate, provided that the owner may thereafter apply for a conditional use permit (minor) for a transient vacation unit or bed and breakfast home pursuant to the provisions of ROH Chapter 21.



CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL _____

A BILL FOR AN ORDINANCE

SECTION 16. This ordinance takes effect 180 days after its approval, provided that the following takes effect upon approval — within 90 days of the enactment of this ordinance, the Director of Planning and Permitting shall mail notice of the enactment of this ordinance and of Section 13 thereof to all holders of a current nonconforming use certificate for a transient vacation unit or bed and breakfast home.

INTRODUCED BY:

DATE OF INTRODUCTION:

 Honolulu, Hawaii

 Councilmembers

APPROVED AS TO FORM AND LEGALITY:

 Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

 Mayor
 City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
C E R T I F I C A T E

RESOLUTION 17-163

Introduced: 05/25/17 By: ERNEST MARTIN

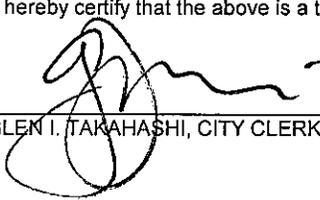
Committee: ZONING AND HOUSING

Title: RESOLUTION PROPOSING AN AMENDMENT TO CHAPTER 21, REVISED ORDINANCES OF HONOLULU 1990 (THE LAND USE ORDINANCE), RELATING TO CERTAIN VISITOR ACCOMMODATIONS.

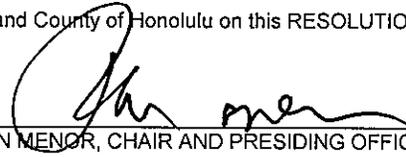
Voting Legend: * = Aye w/Reservations

10/26/17	ZONING AND HOUSING	CR-406 – RESOLUTION REPORTED OUT OF COMMITTEE FOR ADOPTION.
11/01/17	COUNCIL	CR-406 AND RESOLUTION 17-163 WERE ADOPTED. 8 AYES: ANDERSON, FUKUNAGA, KOBAYASHI, MANAHAN, MARTIN, MENOR, OZAWA, PINE. 1 NO: ELEFANTE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.



GLEN I. TAKAHASHI, CITY CLERK



RON MENOR, CHAIR AND PRESIDING OFFICER